



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Atlantic Ocean south of entrance to Chesapeake Bay off Camp Pendleton, Virginia; firing range.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to establish a permanent danger zone in waters of the Atlantic Ocean south of Rudee Inlet in Virginia Beach, Virginia. The Camp Pendleton firing range supports a myriad of stakeholders that include all components of the Department of Defense, including: US Army, Army National Guard, Army Reserve, US Navy, Navy Reserve, US Marine Corps, US Marine Corps Reserve, US Air Force, Air Force National Guard, Air Force Reserve, US Coast Guard, and Coast Guard Reserve, as well as many non-DoD units. Camp Pendleton, VA will provide an economical, safe training environment for individual live fire exercises, and collective units to conduct the minimum requirements for weapons qualification. The proposed danger zone will increase the level of safety to the public in the vicinity of the live firing operations by providing additional notice of the hazards present.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2015-0006, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil . Include the docket number, COE-2015-0006, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2015-0006. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured

and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and also include your contact information with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov . All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-7122.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing amendments to regulations in 33 CFR Part 334 to establish a permanent danger zone in waters of the Atlantic Ocean, south of

the entrance to Chesapeake Bay off Camp Pendleton, Virginia. The proposed establishment of a permanent danger zone is necessary to protect the public from hazards associated with live firing operations.

Procedural Requirements

a. Review under Executive Order 12866.

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

This proposed rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The danger zone is necessary to protect public safety and satisfy Department of Defense operations requirements for weapons training. Small entities can utilize other navigable waters outside of the danger zone when the danger zone is activated. After considering the economic impacts of this proposed danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. We are interested in the potential impacts of the danger zone on small entities and welcome comments on issues related to such impacts.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. Unfunded Mandates Act.

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add §334.405 to read as follows:

§334.405 South of entrance to Chesapeake Bay off Camp Pendleton, Virginia;
firing range.

(a) The danger zone. The danger zone encompasses all navigable waters of the United States as defined at 33 CFR Part 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 36°49'00" N, longitude 75°58'04" W; thence to latitude 36°49'19" N, longitude 75°57'41" W; thence to latitude 36°49'21" N, longitude 75°57'32" W; thence to latitude 36°49'13" N, longitude 75°56'44" W; thence to latitude 36°49'22" N, longitude 75°55'48" W; thence to latitude 36°49'12" N, longitude 75°55'46" W; thence to latitude 36°49'02" N, longitude 75°55'45" W; thence to latitude 36°48'52" N, longitude 75°55'45" W; thence to latitude 36°48'54" N, longitude 75°56'42" W; thence to latitude 36°48'41" N, longitude 75°57'28" W; thence to latitude 36°48'41" N, longitude 75°57'37" W; thence to latitude 36°48'57" N, longitude 75°58'04" W. The datum for these coordinates is WGS84.

(b) The regulations. (1) Persons and vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purpose of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. No firing will be done during the hours of darkness or low visibility.

(3) Firing on the ranges shall be suspended as long as any persons or vessels are within the danger zone.

(4) Lookout posts shall be manned by the activity or agency operating the firing range State Military Reservation, Camp Pendleton.

(5) There shall be no firing on the range during periods of low visibility which would prevent the recognition of a person or vessel (to a distance of 7,500 yards) which is properly displaying navigation lights, or which would preclude a vessel from observing the red range flags or lights.

(c) Enforcement. The regulations in this section shall be enforced by the Adjutant General of Virginia, and such agencies as he or she may designate.

Dated: June 12, 2015

Approved: _____

Edward E. Belk, Jr., P.E.

Chief, Operations and

Regulatory Division

Directorate of Civil Works

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